WP(C) 262/2002
BEFORE
THE HON'BLE MR. JUSTICE H. N. SARMA
(1) Heard Mr. C. Baruah, learned Senior counsel assisted by Mr. R. K. Dutta, learned counsel appearing for the petitioners and also heard Mr. B. L. Singh, the learned Senior govt. Advocate appearing on behalf of the state respondents.

(2) In pursuance to an advertisement No. ED. 2/atp/231/95 dated 3. 11. 1997, issued by the Director of School Education, Government of Arunachal Pradesh, Naharlagun, inviting application from the qualified candidates for filling up the certain posts of Trained graduate Teachers (TGT) in the subject of social Studies, the petitioners who were duly qualified to hold such posts submitted their application offering their candidatures along with some other candidates. A selection test was held by the authority for selecting the candidates for appointment in the aforesaid posts and after such selection, a merit list was prepared. In the said select/merit list, the names of the petitioners and the private respondent Nos. 3 to 21 duly appeared.

(3) The names of the private respondent nos 3 to 21 appeared above the names of the petitioners in striatum of the said select/ merit list. Pursuant to the said selection, the petitioners were offered appointments vide orders No. ED-2 420 /apt/99-2000 dated 01/7/1999 and they were appointed as Junior teachers in the subject of Social Studies in different Govt. Schools of the State of arunachal Pradesh. While the petitioners were serving in the said capacity, the private respondents approached this Court by filing wp (C) No. 94 (AP) 2000 and WP (C) 162 (AP) 2000, alleging inter alia, that their names having figured above the present writ petitioners in the select/merit list, they ought to have been appointed earlier to the petitioners. This court vide judgment and order dated 17. 8. 2001 after hearing the learned counsel far the petitioners and the learned Govt, Advocate as well as considering the ratio of several decisions by the Apex Court, inter alia, held as follows:

\in view of the above position, I direct the State respondents, contempt authority to afford appointment to the writ petitioners herein the posts of Junior Teachers (TGT) except petitioner no. 6, Ms. Otok Tamuk in WP (C) No. 94 (AP)2000, by maintaining the same select/merit list within a period of one month from the date of receipt of this judgment and order. \

(4) The aforesaid order was challenged by the State in Writ Appeal No. 481 of 2001 and the writ appellate Court vide order dated 7. 12. 2001, dismissed the said writ appeal on the date of admission itself, affrming the judgment passed by the learned Single Judge.

(5) It is pertinent to mention here that in the aforesaid two writ petitions, namely, in WP (C)94 (AP) 2000 and WP (C) 162 (AP) 2000, the writ petitioners (arising out of the aforesaid writ petitions) were not impleaded as party respondents. Although, they were impleaded as proforma respondents in Writ appeal No. 481 of 2001 filed by the state respondents, the said appeal was dismissed on the date of admission itself, on 7. 12. 2001 and no notice of appeal was issued to the petitioners before dismissal of the same.

(6) The Director of School Education, respondent no. 2, thereafter relying the judgment and order dated 17. 8. 2001 passed in wp (C) 162 (AP) 2000 and WP (C) (AP)2000, affirmed in the writ appeal No. 481 of 2001, terminated the services of the petitioners vide order No. ED2/cc/tt-TY/2001 dated 26. 4. 2002 by the respondent No. 2 and similar orders were passed in respect of all the petitioners. For the first time, coming to know about passing of the order by the High Court in the aforesaid two writ petitions and in a writ appeal from the impugned orders, the petitioners filed a review application being RP No 31 of 2002 in WA No. 481 of 2001. The said review application was disposed of on 29/5/2002, with the fo

llowing order by the hon'ble Division Bench:

\29. 05. 2002 no review petition lies on behalf of the present petitioners. We m ay also observe that the review petitioners may file a Writ Petition. The review petition is dismissed. \

(7) In pursuance to the liberty so given by the writ appellate Court, the pres ent petition has been filed by the petitioners challenging that their order of t ermination dated 26. 4. 2002, on the ground inter alia that the impugned termina tion orders having been passed in pursuance to the order passed by the Hon'ble H igh Court in WP (C) 94 (AP)2000 and WP (C) 162 (AP) 2000 decided in the absence of the petitioners even without impleading the petitioners, the same are vio-lat ive of the basic principles of natural justice and fairplay. That apart, the imp ugned orders dated 26. 4. 2002 also having been passed without giving any opport unity of being heard or without issuing any show cause to the petitioners is als o violative of the basic principles of natural justice.

(8) It is further alleged by the petitioners that they possessed the necessary essential qualifications in consonance with the requirement of the Recruitment Rule, 1973 to Class-in (Non-Gazetted) Teachers posts in the directorate of Educa tion, Arunachal Pradesh administration by acquiring B. Ed, qualifications and th e private respondents not having such qualifications, the appointment of the pet itioners vide order dated 1. 7. 1999 cannot be faulted with, rather it is in con sonance with the said statutory Rules and the private respondents not having pos sessed such qualifications to hold the posts cannot have a march over the petiti oners.

(9) An affidavit-in-opposition has also been filed by the State respondents wh erein the aforesaid facts regarding filing the earlier writ petitions by the pri vate respondents for cancellation of the appointment of the petitioners, pursuan t to the orders passed therein are not disputed and it is also not disputed that no notices were issued to the petitioners before cancellation of their appointm ents and that the petitioner were not even impleaded as party in the earlier wri t petitions.

(10) It is the case of the State respondents that the cancellation of appointm ents of the petitioners were made since the rights of the petitioners of WP (C) 94 (AP) 2000 and wp (C) 162 (AP) 2000 were superseded by the Hon'ble High Court and fresh appointments order were issued strictly in compliance with the seriatu m in the select/merit list. Regarding not having the essential qualifications by the private respondents, the State respondents have stated in their affidavit o pposition that with a view to enable the untrained Arunachalee candidates their cases had to be considered for appointment as there are very small numbers of ca ndidates with b. Ed. Degree in the State, a relaxation was made in the advertise ment dated 3. 11. 1997 to the effect. However, in the said affidavit-in-oppositi on, it has not been stated that pursuant to such decision, the provisions contai ned in the statutory Rules has been amended incorporating such relaxation.

(11) Mr. C. Baruah, learned Senior Counsel for the petitioners referring to th e various averments made in the writ petition as well as the documents annexed t hereto has submitted that in the instant case, the principle of natural justice is given a complete go by way of by cancelling the impugned orders of terminatio n dated 26. 4. 2002 without serving any prior notice. It has also been submitted that the petitioners having possessed the essential qualifications in terms of the statutory Rules to hold the posts of Trained Graduate Teachers (TGT), they a re entitled to be appointed in preference to others including the private respon dent Nos. 3 to 21, who do not hold such qualifications.

(12) Mr. B. L. Singh, learned Senior Govt. Advocate, on the one hand, submitte d that pursuant to the interim order passed by this court on 24. 6. 2002, the pe

titioners are continuing in their services as TGT and on the (other hand, the pr ivate respondents who were appointed by the Director of School Education in term s of the order passed by this Court in earlier in Civil Rules are also continuin g in fheir service.

(13) It is stated at the Bar that the private respondents have been adjusted a gainst the subsequent vacancies that arose in the Department whereas the petitio ners are continuing in their posts w. e. f. 01/7/1999 and the petitioners are al so getting their due increments and other service benefits. Mr. B. L. Singh has further submitted that the names of the private respondents having been placed a bove the petitioners in the merit/select list and in view of the order passed by the Hon'ble High court, the private respondents were entitled to be appointed a nd in order to accommodate those private respondents, the services of the petiti oners were terminated. However, [mr. B. L. Singh, in his usual fairness does not deny that, in such cases, the principle of natural justice is required to be fo llowed before termination of the services of the petitioners, but that has not b een done in the instant case.

(14) I have considered the rival submissions made by the parties and also peru sed the impugned termination orders including the documents available on record as well as the averments made in the affidavit-in-opposition. Certain facts are not disputed in the instant case and these undisputed facts are that the petitio ners possesses the essential qualifications for being appointed as TGT in terms of the statutory Rules, that in the merit/select list, the names of the petition ers find below those of the private respondents, the private respondents do not possess B. Ed, degree, which is an essential qualification in terms of the Recru itment Rules, that the petitioners were not impleaded as party in the earlier wr it petitions and although they were impleaded as pro forma respondents in the WA No. 481 of 2001, the said appeal was dismissed on the date itself without servi ng any notice upon them, that in the review application No. RP-31/2002 filed by the petitioners, the Hon'ble division Beach allowed the petitioners to approach by a fresh writ, and finally, both the private respondents as well as the petiti oners now serving as TGT under the Department of Education in the State of Aruna chal pradesh.

(15) In the premises of the undisputed facts it is now to be decided as to whe ther the impugned order of termination of services of the petitioners dated 26. 4. 2002 are sustainable in law or not. In terms of the various judicial pronounc ements, it is no longer res Integra that before cancelling an appointment order pursuant to an order of the Court, such person should be impleaded as a party in such proceeding and no order directing to cancell such regular appointment be m ade without such impleadment. We may readily refer to the decision of the Apex C ourt in a Case of a. M. S. Sushanth and Others Vs. M. Sujatha and Others, report ed in (2000) 10 scc 197, wherein the Apex Court has inter alia held that the pri nciples of natural justice demanded that any person who was going to be adversel y affected by the order should have had an opportunity of being heard. Again the Apex Court took the similar view in the case of Jaswant Singh and Others Vs. St ate of M. P. and Others, reported in (2002) 9 scc 700, wherein in Para-7, the Ap ex Court held as follows:

\the appellants having been appointed pursuant to the order of the Panchayat and having been continued as LDC since February, 1987, no order under sub-section (1) of the Section 83 of the Adhiniyam could have been passed by the Collector wi thout affording the opportunity of hearing to them. Admittedly, the opportunity of hearing has not been given. The impugned order of cancellation, therefore, st ands vitiated. We therefore, set aside the order of the high Court as well as th e order of cancellation passed by the Collector. \

(16) Admittedly, the petitioners were necessary party in the earlier proceedin gs. The effect of non joinder of such necessary party in a proceeding wherein th

eir appointments were cancelled come up for consideration before the Apex Court in the case of J. Jose dhanapaul Vs. S. Thomas and Ors. reported in (1996) 3 SCC 587. At para 4 of the said judgment, the Apex Court held as follows:

\it is not in dispute that the appellant was not a party to the impugned order dated 15. 6. 1993 made in OA No. 2199 of 1992 by the Tamil Nadu administrative Tribunal at Madras. Without being impleaded as a party, appointment of thomas was annulled by the impugned order. The Tribunal therefore, has committed grave error of law in upsetting his appointment when he was not made a party. The impugned order is set aside as regards the appellant. \
Similar view was expressed by the Apex court in the Case of S. Jaffar Sahib Vs. Secretary, A. P. P. S. C. and Ors. , reported in (1996)11 SCC 753. At para 4 of the said judgment, the Apex Court has inter alia held as follows :Then again there is an additional hurdle on the part of the appellant, namely, affected persons are not made parties to the proceedings. It is too well settled that without impleading a person as a party whose rights would be affected, no court/tribunal can pass any order against him. . . . \

(17) It is, no doubt, true that neither the writ Court nor the writ appellate Court in earlier proceedings, directed to cancel the appointment orders of the petitioners in order to accommodate the private respondents. The impugned termination orders dated 26. 4. 2002 as well as the stand of the State government is that the said cancellation orders of appointment of the petitioners were made in terms of the aforesaid orders passed by this Court.

(18) In that view of the matter it cannot be said that the principles of natural justice was followed in this case before issuing the impugned termination orders. The Director of school Education, Respondent No. 2 also before issuing the impugned termination orders dated 26. 4. 2002 did not issue any show cause notices to the petitioners to show cause as to why the appointments of the writ petitioners should no be cancelled/terminated in view of the order passed by this Court in wp (C) 162 (AP) 2000 and WP (C) 94 (AP)2000, affirmed in WA No. 481of2001. Had the petitioners been provided with such opportunities, certainly the petitioners would have disclosed the reasons regarding their entitlement to continue with their orders of appointments, but that has not been done in the instant case .

(19) Upon discussions made herein above, this Court finds that the impugned orders of termination dated 26. 4. 2002 terminating the respective appointment of the petitioners as tgt is vitiated for non observance of the basic principles of Natural Justice and fairplay in action and the authority committed an error apparent on the face of the record in the decision making process while taking decision to terminate the services of the petitioners, without providing any opportunity of hearing to the petitioners.

(20) In view of the aforesaid discussions, I find that the impugned orders of termination dated 26. 4. 2002 are not sustainable in law and those are set aside and quashed. It is observed that quashing the impugned order will not preclude the authority to pass an appropriate order by giving proper and due opportunities to the petitioners to defend their cases, if so advised.

(21) Accordingly, this writ petition is allowed. No costs.